

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

PIXIE L. ELIA,

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Claimant,

\*

v.

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CASE NO. 4:08-CV-4(CDL)  
Social Security Appeal

MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Respondent.

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**REPORT AND RECOMMENDATION**

On January 10, 2008, the Claimant filed the current social security appeal pursuant to 42 U.S.C. 405(g). On the same date, the Claimant attempted to perfect service upon the Defendant by issuing a summons. Since that time, the Claimant has failed to attempt service upon the Defendant in this case. Federal Rule of Civil Procedure 4(m) provides that “If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or its own initiative after notice to the plaintiff, shall dismiss the action without prejudice....” Because it has now been more than 240 days since the Claimant filed her complaint, the court is within its jurisdiction to dismiss the case without prejudice.

WHEREFORE, it is hereby RECOMMENDED that this case be DISMISSED for failure to comply with FEDERAL RULE OF CIVIL PROCEDURE 4(m). Pursuant to 28 U.S.C. § 636(b)(1), Claimant may serve and file written objections to this recommendation with the UNITED STATES DISTRICT JUDGE within ten (10) days after being served a copy of this recommendation.

So RECOMMENDED, this 12th day of September, 2008.

eSw

S/G. MALLON FAIRCLOTH  
UNITED STATES MAGISTRATE JUDGE